

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHARLES A. DINGLE,)	
)	
Plaintiff,)	9:98CV1079
)	
v.)	
)	
)	
ROBERT N. VOSPER, JR.,)	MEMORANDUM OPINION
)	
Defendant.)	
_____)	

This matter was called to commence trial on August 21, 2006, at 9 a.m. Plaintiff failed to appear, although he had twice been advised during the past two months that if he failed to appear, his case would be dismissed.

This case is now over eight years old. The following is a brief review of its history. The plaintiff, Charles Dingle, filed his complaint on July 9, 1998 (Filing No. 1). Dingle named eight individual defendants in his complaint. On July 21, 2003, the defendants' motion for summary judgment was granted by the Court because plaintiff had failed to exhaust his administrative remedies as to some of his claims (Filing No. 95).

The Second Circuit Court of Appeals vacated this Court's grant of summary judgment only as to the claims brought against defendant Robert Vosper but affirmed the dismissal of claims against all of the other defendants (Filing No. 106).

The following claims remain:

- 1) Whether Vosper retaliated against Dingle for Dingle's First

Amendment activities as a member of
the Inmate Grievance Resolution
Committee and, if so,

2) Whether all or part of Vosper's
retaliation was justified by the
personal threat Vosper claims
Dingle made against him.

On January 14, 2005, this Court appointed Michael J. Longstreet of the Setright, Longstreet Law Firm as counsel for plaintiff. On February 22, 2005, Mr. Longstreet's associate, John C. Setright advised the Court that he would try this lawsuit on behalf of his firm (Filing No. 111).

On March 11, 2005, Mr. Setright filed a motion seeking to be relieved from his appointment to represent Mr. Dingle (Filing No. 126). Accompanying his motion was Mr. Setright's affidavit which noted that substantial disagreements existed between Mr. Setright and Mr. Dingle concerning litigation strategies (Filing No. 127). The Court granted Mr. Setright's motion on March 17, 2005 (Filing No. 129).

On March 22, 2005, the Court appointed Kevin R. Van Duser as counsel for Mr. Dingle (Filing No. 130). Soon thereafter, on May 2, 2005, Mr. Dingle asked the Court to appoint new counsel and replace Mr. Van Duser (Filing No. 135). Mr. Van Duser joined in Mr. Dingle's motion (Filing No. 148). On July 26, 2005, after a telephone conference with Mr. Dingle and Mr. Van Duser, the Court denied Mr. Dingle's motion for appointment

of new counsel and scheduled trial for October 31, 2005 (Filing No. 139).

On October 3, 2005, Mr. Dingle filed his notice of interlocutory appeal to the Second Circuit Court of Appeals (Filing No. 146) and also filed a letter motion to this Court requesting a ninety-day postponement of trial (Filing NO, 147). On October 4, 2005, Mr. Van Duser filed an emergency motion for temporary restraining order (Filing No. 148), accompanied by Mr. Van Duser's affidavit in which he reiterated Mr. Dingle's strong wish to represent himself, as well as detailing several areas where Mr. Van Duser and Mr. Dingle were in strong disagreement as to the number and types of motions to be filed, as well as the number of witnesses and the purposes for which witnesses should be called. The interlocutory appeal served to stay the proceedings.

On February 1, 2006, the Second Circuit Court of Appeals issued its mandate dismissing Mr. Dingle's interlocutory appeal (Filing No. 154). The Court subsequently granted Mr. Van Duser's request to withdraw as counsel (Filing No. 155) and denied as moot Mr. Dingle's letter motion for a ninety-day postponement (Filing No. 155).

On March 1, 2006, Mr. Dingle filed a motion asking Judge Strom to recuse himself (Filing No. 157). This motion was denied on March 8, 2006 (Filing No. 158).

On June 13, 2006, the Court sent notice to Mr. Dingle informing him that a telephone status conference was scheduled for July 7, 2006, and trial was now scheduled to commence on August 21, 2006 (Filing No. 161). Mr. Dingle responded with a letter dated June 15, 2006, in which he advised the Court that he would not be participating in the telephone conference scheduled for July 7, 2006, and would not be attending the trial scheduled for August 21, 2006 (Filing No. 162). A telephone conference was held on July 7, 2006, as scheduled, and Mr. Dingle was advised that his action would be dismissed for want of prosecution if he failed to appear for trial on August 21, 2006 (Filing No. 163).

On August 4, 2006, Mr. Dingle filed a letter motion requesting postponement of the trial until he could have his eyes examined and a new pair of eye glasses provided (Filing No. 167). A telephone conference was held on August 11, 2006. After the telephone conference, the Court rejected this motion (Filing No. 171), and ordered the issuance and service of subpoenas for witnesses by the U.S. Marshal as requested by Mr. Dingle.

On August 21, 2006, plaintiff filed a written notice advising the Court he would not attend the trial. For the foregoing reasons, this action will be dismissed without

prejudice for failure to prosecute. A separate order will be entered in accordance with this memorandum opinion.

DATED this 28th day of August, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court